



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2012-0289; FRL-9946-69-Region 1]

Air Plan Approval; New Hampshire; Ozone Maintenance Plan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire that contains an ozone maintenance plan for New Hampshire's former 1-hour ozone nonattainment areas. The Clean Air Act requires that areas that are designated attainment for the 1997 8-hour ozone standard, and also had been previously designated either nonattainment or maintenance for the 1-hour ozone standard, develop a plan showing how the state will maintain the ozone standard for the area. The intended effect of this action is to approve New Hampshire's maintenance plan. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective **[insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2012-0289 at <http://www.regulations.gov>, or via email to arnold.anne@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, Air Quality Planning Unit, U.S. Environmental Protection Agency, Suite 100, Mail Code OEP05-02, Boston, MA 02109-3912, telephone number (617) 918-1047, fax number (617) 918-0047, email arnold.anne@epa.gov .

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What is the Background for this Action?
- II. What Action is EPA Taking?
- III. What is a Section 110(a)(1) Maintenance Plan?
- IV. How has New Hampshire Addressed the Components of a Section 110(a)(1) Maintenance Plan?
- V. Final Action
- VI. Statutory and Executive Order Reviews

I. What is the Background for this Action?

This action addresses requirements associated with the transition from the 1-hour National Ambient Air Quality Standards (NAAQS) for ground-level ozone to the 1997 8-hour ozone NAAQS.

EPA has established, and periodically reviews and revises, the NAAQS for ground-level ozone. On July 18, 1997 (62 FR 38855), EPA published a final rule for a new 8-hour ozone standard of 0.08 parts per million (ppm). On April 30, 1994 (69 FR 23858), EPA designated and classified areas for the 1997 8-hour ozone NAAQS. Also, on April 30, 2004 (69 FR 23951), EPA published the Phase 1 rule for implementation of the 1997 8-hour ozone NAAQS. Among other requirements, this rule set forth requirements for anti-back sliding purposes for areas designated attainment for the 1997 8-hour ozone standard.

Subsequently, in 2008, and in 2015, EPA again revised the ozone NAAQS to 0.075 ppm and 0.070 ppm, respectively.

II. What Action is EPA Taking?

EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on March 2, 2012. The SIP revision consists of the Clean Air Act (CAA or Act) section 110(a)(1) ozone maintenance plan for the 1997 8-hour ozone standard for New Hampshire. The maintenance plan demonstrates how the state intends to maintain the 1997 8-hour National Ambient Air Quality Standard for ozone.

The CAA section 110(a)(1) maintenance plan requirement applies to areas that are designated as attainment/unclassifiable for the 1997 8-hour ozone standard and also had a designation of either nonattainment or attainment with an approved maintenance plan for the 1-hour ozone standard as of June 15, 2004, the effective date of the 1997 8-hour ozone standard designation for these areas (See 69 FR 23857). In New Hampshire, this area consists of the cities and town listed in Table 1.

**Table 1. 1-Hour Ozone Nonattainment/Maintenance Areas Designated Unclassifiable/Attainment for the 8-Hour Standard as of June 15, 2004
(= New Hampshire Maintenance Planning Area)**

Area	County	Cities and Towns Included
Boston-Lawrence-Worcester Area	Hillsborough (part)	Mont Vernon, Wilton
Manchester Area	Hillsborough (part)	Antrim, Bennington, Deering, Francestown, Greenfield, Greenville, Hancock, Hillsborough, Lyndeborough, Mason, New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare, Windsor
	Merrimack (part)	Allenstown, Andover, Boscawen, Bow, Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, New London, Newbury, Northfield, Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster, Wilmot
Rockingham County	Rockingham (part)	Deerfield, Northwood, Nottingham
Strafford County	Strafford (part)	Barrington, Farmington, Lee, Madbury, Middleton, Milton, New Durham, Strafford

Cheshire County	Cheshire (all)	Alstead, Chesterfield, Dublin, Fitzwilliam, Gilsum, Harrisville, Hinsdale, Jaffrey, Keene, Marlborough, Marlow, Nelson, Richmond, Rindge, Roxbury, Stoddard, Sullivan, Surry, Swanzey, Troy, Walpole, Westmoreland , Winchester
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III. What is a Section 110(a)(1) Maintenance Plan?

Pursuant to section 110(a)(1) of the Clean Air Act, the implementation rule for the 1997 ozone standard requires that areas that were either nonattainment or maintenance areas for the 1-hour ozone NAAQS, but attainment for the 1997 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 1997 8-hour ozone NAAQS. EPA established June 15, 2007, three years after the effective date of the initial 1997 8-hour ozone designations, as the deadline for submission of plans for these areas. See 40 CFR 51.905.

On May 20, 2005, EPA issued guidance¹ that applies, in part, to areas that are designated attainment/unclassifiable for the 1997 8-hour ozone standard and either have an approved 1-hour ozone maintenance plan or were designated nonattainment of the 1-hour ozone standard. The purpose of the guidance is to assist the states in the development of a section 110(a)(1) maintenance plan SIP. There are five components of a section 110(a)(1) maintenance plan which are: (1) an attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) for a ten-year period from a base year as chosen by the state; (2) a maintenance demonstration which shows how the area will remain in compliance with the 1997 8-hour ozone standard for 10 years after the effective date of designations (June 15, 2004); (3) a commitment to continue to operate air quality monitors; (4) a contingency plan that will ensure that a violation of the 1997 8-hour ozone NAAQS is promptly

¹ "Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act," EPA memorandum dated May 20, 2005, from Lydia Wegman to Air Division Directors.

addressed; and (5) an explanation of how the state will track the progress of the maintenance plan.

Subsequently, in the implementation rule for the 2008 ozone NAAQS (80 FR 12264; March 6, 2015), EPA revoked the 1997 8-hour ozone standard. Nevertheless, New Hampshire's March 2, 2012 SIP revision of a Section 110(a)(1) ozone maintenance plan for the 1997 8-hour ozone standard is pending before us, so we are taking action on it at this time.

IV. How has New Hampshire Addressed the Components of a Section 110(a)(1) Maintenance Plan?

EPA has determined that the New Hampshire Department of Environmental Services (NHDES) 1997 8-hour ozone maintenance plan addresses all of the necessary components of a Section 110(a)(1) 1997 8-hour ozone maintenance plan as discussed below.

A. Emissions Inventory

An emissions inventory is an itemized list of emission estimates for sources of air pollution in a given area for a specified time period. NHDES has provided a comprehensive emissions inventory for ozone precursors (NO_x and VOCs) in the area. NHDES uses 2002 as the base year from which it projects emissions. The submittal also includes an explanation of the methodology used for determining the anthropogenic emissions (point, area, and mobile sources) in the maintenance area. The inventory is based on emissions for a "typical summer day."

B. Maintenance Demonstration

With regard to demonstrating continued maintenance of the 1997 8-hour ozone standard, NHDES projects that the total emissions from the maintenance area will decrease during the ten-year maintenance period. NHDES has projected emissions from 2002 until 2014. The projected trend in emissions is downward. This clearly demonstrates that the 1997 8-hour ozone standard will be maintained for the ten year period between 2004 and 2014, which is the required test.

Table 2 shows the total VOC and NO_x emissions for the maintenance area in New Hampshire for the base year (2002), an interim year (2012), and a final year (2014).² More detailed emissions tables can be found in the NHDES submittal. The trend in emissions is downward, for each pollutant in the area. As such, the plan demonstrates that, from an emissions projections standpoint, emissions are projected to decrease.

Table 2. 2002, 2012, and 2014 VOC and NO_x Emissions for Cheshire, Hillsborough, Merrimack, Rockingham, and Strafford Counties (pounds per day)

Source Category	VOC			NO _x		
	2002	2012	2014	2002	2012	2014
Point	15,898	6,696	7,005	67,347	48,358	50,739
Area	93,778	85,443	91,068	10,516	9,091	9,134
Non-Road Mobile	68,223	40,210	35,121	49,787	36,131	31,215
On-Road Mobile	87,161	36,904	34,245	261,303	75,202	62,347
Total	265,060	169,253	167,439	388,953	168,782	153,435

C. Ambient Monitoring

With regard to the ambient air monitoring component of a maintenance plan, New Hampshire's submittal describes the ozone monitoring network in the maintenance area and New Hampshire commits to the continuing operation of an effective air quality monitoring network to verify the

² It should be noted that the emissions shown in this table are for the entire five counties named, rather than the somewhat smaller maintenance area, due to the difficulty of parsing out inventory data to a sub-county basis. This difference is not considered significant, and does not affect the downward trend shown in the emissions.

area's attainment status in accordance with the Code of Federal Regulations (CFR), specifically, 40 CFR part 58. New Hampshire's SIP revision was submitted on March 2, 2012 and includes ozone design values³ for 2010 and 2011 which demonstrate that the maintenance area is meeting the 0.08 ppm 1997 8-hour ozone standard. In addition, based on more recent ozone data from 2014, all of New Hampshire meets the 1997 8-hour ozone standard. Furthermore, preliminary ozone data for 2015 shows that all of New Hampshire continues to meet the 1997 8-hour ozone standard. Table 3 shows the ozone design values for each monitor in the five county area listed in Table 2. As noted in Table 1, portions of these counties make up New Hampshire's maintenance area.

Table 3. Ozone Design Values (ppm) for Monitors in the New Hampshire Maintenance Area

Monitor Location	AQS ⁴ Number	Design Value	
		2014	2015 ⁵
Keene	330050007	0.062	0.060
Peterborough	330115001	0.070	0.067
Nashua	330111011	0.066	0.064
Concord	330131007	0.063	0.062
Portsmouth	330150014	0.068	0.066
Rye	330150016	0.068	0.068
Londonderry	330150018	0.067	0.065

D. Contingency Measures

EPA interprets section 110(a)(1) of the CAA to require that the state develop a contingency plan that will ensure that any violation of a NAAQS is promptly corrected. Therefore, as required by

³ The design value at an ozone monitor is the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration measured at that monitor. The design value for an area is the highest design value recorded at any monitor in the area.

⁴ AQS is EPA's Air Quality System. States submit ozone monitoring data to AQS.

⁵ Ozone design values for 2015 are based on preliminary data.

section 110(a)(1) of the Act, New Hampshire has listed in its submittal possible contingency measures, as well as a protocol the state will follow, in the event of a future ozone air quality problem. As noted in New Hampshire's SIP revision, at the conclusion of each ozone season, NHDES will evaluate whether the design value for any ozone monitor in the maintenance area meets the 1997 8-hour ozone standard. If the design value is above the standard, NHDES will evaluate the potential causes of this design value increase, specifically, whether this increase is due to an increase in local in-state emissions, an increase in upwind out-of-state emissions, or an exceptional event as defined in 40 CFR 50.1. If an increase in in-state emissions is determined to be a contributing factor to the design value increase, NHDES will evaluate the projected in-state emissions for the maintenance area for the ozone season in the following year. If in-state emissions are not expected to satisfactorily decrease in the following ozone season in order to mitigate the violation, New Hampshire will implement one or more of the contingency measures listed in the submittal, or substitute other VOC or NO_x control measures to achieve additional in-state emission reductions. The contingency measure(s) will be selected by the Governor, or the Governor's designee, within six months of the end of the ozone season for which contingency measures have been determined necessary. Further details on the types of possible control measures to be used as contingencies can be found in the New Hampshire submittal. New Hampshire's submittal satisfies EPA's contingency measure requirements.

E. Tracking Progress

New Hampshire's SIP revision notes that the State will track the maintenance of attainment by analyzing air quality trends at local monitors and annually updating the state's emissions inventories. NHDES produces comprehensive emission inventories on a three-year cycle and revises the inventories annually using updated emissions data for the largest sources.

Finally, as a practical matter, at this point in time, the 10 year maintenance period (2004-2014) has ended and, as noted by the ozone design values in Table 3 above, the area has maintained the 1997 8-hour ozone standard.

V. Final Action

EPA is approving into the New Hampshire SIP the Clean Air Act Section 110(a)(1) 1997 8-hour ozone maintenance plan for the New Hampshire area that is required to have such a plan. This area includes the cities and towns listed in Table 1 above.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed.

This rule will be effective [insert date 60 days after date of publication in the Federal Register] without further notice unless the Agency receives relevant adverse comments by [insert date 30 days after date of publication in the Federal Register].

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [insert date 60 days after date of publication in the

Federal Register] and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is

published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 4, 2016.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE – New Hampshire

2. Section 52.1534 is amended by adding paragraph (j) to read as follows:

§52.1534 Control strategy: Ozone.

* * * * *

(j) Approval--EPA is approving the Clean Air Act section 110(a)(1) maintenance plan for the 1997 8-hour ozone National Ambient Air Quality Standard in the area of the New Hampshire required to have such a plan. This area includes portions of Hillsborough, Merrimack, Rockingham, and Strafford Counties, and all of Cheshire County. This maintenance plan was submitted to EPA on March 2, 2012.

[FR Doc. 2016-11963 Filed: 5/20/2016 8:45 am; Publication Date: 5/23/2016]